

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Souad Moussawi	Team: Team # 2	CCRB Case #: 200817856	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 12/05/2008 2:30 PM	Location of Incident: § 87(2)(b)	Precinct: 81	18 Mo. SOL 6/5/2010	EO SOL 6/5/2010	
Date/Time CV Reported Sat, 12/06/2008 12:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 12/10/2008 2:45 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. CPT Michael Lipetri	00000	906647	NARCBBN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Edward Mercado	03064	930726	NARCBBN
2. SGT Daniel Sbarra	05029	920813	NARCBBN
3. DT3 Matthew Savage	06484	926077	NARCBBN
4. DT3 Frank Galati	02819	928335	NARCBBN
5. DT3 Andrew Erato	02395	925243	NARCBBN
6. DT3 Fawad Khan	07739	925537	NARCBBN
7. DT3 James Delumen	03621	922213	NARCBBN
8. DT3 Vincent Barese	01540	927899	NARCBBN
9. DT3 Robert Livingston	04541	925619	NARCBBN

Officer(s)	Allegation	Investigator Recommendation
A.CPT Michael Lipetri	Abuse: Captain Michael Lipetri supervised the entry and search of § 87(2)(b) § 87(2)(b) in Brooklyn.	
B. Officers	Force: Officers used physical force against § 87(2)(b) and § 87(2)(b)	
C. Officers	Discourtesy: Officers spoke obscenely and/or rudely to § 87(2)(b)	

### Synopsis

§ 87(2)(b) filed the following complaint with IAB on December 6, 2008. The complaint was referred to the CCRB on December 10, 2008. On December 5, 2008, approximately 2:30 PM, § 87(2)(b) was in her home at § 87(2)(b) in § 87(2)(b) in Brooklyn. Also in the apartment at the time were § 87(2)(b)'s son, § 87(2)(b) her § 87(2)(b)-old daughter, § 87(2)(b) and § 87(2)(b). § 87(2)(b) heard a loud bang come from the front door and exited her bedroom to answer the door. Before she could answer it, the door burst open and several male officers rushed into § 87(2)(b)'s apartment (**Allegation A**). An unidentified officer, PO7, rushed towards § 87(2)(b) punched her in her stomach twice and pushed her twenty feet into the living room (**Allegation B**). § 87(2)(b)'s son, § 87(2)(b) followed behind § 87(2)(b) running toward the front door. An unidentified officer grabbed § 87(2)(b) from behind by his arms, threw him to the floor and began to punch him in the face (**Allegation B**). § 87(2)(b) who was in the kitchen at the time, was hit on the top of his head by an unidentified officer with the badge hanging around his head (**Allegation B**). A Hispanic female officer then escorted § 87(2)(b) out of the building. § 87(2)(b) was crying and the female officer said, "Shut the fuck up" (**Allegation C**). Another unidentified officer, PO2, also told § 87(2)(b) to, "Shut the fuck up" (**Allegation C**). § 87(2)(b)'s neighbors, § 87(2)(b) and § 87(2)(b) were standing outside of their apartments and observed the incident.

§ 87(2)(b) alleged that her home was entered and searched. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) alleged that an officer rushed toward her, punched her in her stomach twice and pushed her twenty feet into the living room and that another officer punched § 87(2)(b) in the face. § 87(2)(b) further alleged that an officer hit § 87(2)(b) on the top of his head with the badge hanging around his neck. Additionally § 87(2)(b) alleged that a female officer and a male officer told her to "Shut the fuck up".

The descriptions of the subject officers provided by § 87(2)(b) and § 87(2)(b) were not sufficient to identify the subject officers in this complaint. Thus, the undersigned investigator arranged a photo array viewing for § 87(2)(b) and § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

### Summary of Complaint

§ 87(2)(b) is a § 87(2)(b). § 87(2)(b) was interviewed at the CCRB on December 18, 2008. On December 5, 2008, approximately 2:30 PM, § 87(2)(b) was in her home at § 87(2)(b) in § 87(2)(b) in Brooklyn. Also in the apartment at the time were § 87(2)(b)'s son, § 87(2)(b) her § 87(2)(b)-old daughter, § 87(2)(b) her husband, § 87(2)(b) and a friend, § 87(2)(b). § 87(2)(b) was lying down in her bedroom with her daughter when she heard § 87(2)(b) say that someone was at the door. She then heard a loud bang come from the front door. § 87(2)(b) exited her bedroom and several male officers rushed into the apartment. Approximately ten officers searched her home. § 87(2)(b) was not provided a warrant but did not request one.

The officers who initially were involved were all white except for one Indian. They were dressed in plainclothes (jeans and sweatshirts) and some of them were wearing NYPD windbreakers. PO1 was described as a medium built male, about 5'6 tall, wearing a police hat. PO1 was the officer with the shield. PO2 had a grey goatee, he was about 6' tall, slim built, in his mid 40's and was wearing a skully-cap § 87(2)(b) described this as a fitted hat). PO3 had long hair, a brown mustache and a hat that § 87(2)(b) could not remember. PO4 was described as an Indian, wearing glasses, chubby and in his 30's. PO5 was described as about 6'1 tall, slim, wearing a grey sweatshirt, in his 30's with black hair. PO6, a Hispanic female who arrived to the apartment later on, was described as having a medium complexion. PO7 was described as being approximately 5'4 in a gray sweatshirt, an NYPD windbreaker, jeans, and a hat. He was a white officer in his 30's, he was wearing a skully-cap and he was a little heavy.

Immediately after the officers burst in, PO7 rushed towards § 87(2)(b) punched her in her stomach twice and then pushed her to the floor. § 87(2)(b) followed behind § 87(2)(b) running toward the front door. § 87(2)(b) questioned the officer hitting his mother and another officer grabbed § 87(2)(b) threw him to the floor and began to punch him in the face. § 87(2)(b) did not remember which officer punched § 87(2)(b). The officer who punched § 87(2)(b) also told him to, "Shut the fuck up."

§ 87(2)(b) was then escorted out of the apartment. At this time, § 87(2)(b)'s neighbors, § 87(2)(b) and § 87(2)(b) were standing outside of their apartments observing the incident. § 87(2)(b) was then handcuffed and an officer hit him on the top of his head with the badge hanging around his neck. § 87(2)(b) did not recall the officer who hit § 87(2)(b). § 87(2)(b) was then escorted out of the apartment. § 87(2)(b) was in the hallway of the apartment at the time, and § 87(2)(b) could not see him.

PO6 then walked into the apartment and escorted § 87(2)(b) to the bathroom and then to her bedroom to get dressed. PO6 then escorted § 87(2)(b) out of the building. § 87(2)(b) cried and PO6 said, "Shut the fuck up." Upon further questioning, § 87(2)(b) stated that PO2 had told her to, "Shut the fuck up." § 87(2)(b) was escorted to a police van in which her son, § 87(2)(b) and § 87(2)(b) were detained. PO4 and PO5 were the drivers of the van. § 87(2)(b) did not notice any bruising on her son's face, but did see that it was a little swelled. Everyone was later escorted to the precinct.

§ 87(2)(b) and § 87(2)(b) both were dismissed with an ACD. § 87(2)(b) discovered that some of her property was damaged upon returning to her apartment.

§ 87(2)(b) is a § 87(2)(b). § 87(2)(b) was interviewed at the CCRB on December 18, 2008. On December 5, 2008, at approximately 2:30 PM, § 87(2)(b) was home at § 87(2)(b) § 87(2)(b) in Brooklyn. § 87(2)(b) was changing his clothes in his bedroom. § 87(2)(b) heard someone banging on the front door and exited his bedroom into the hallway in order to respond to the banging. § 87(2)(b) said, "Hold on, hold on." Before § 87(2)(b) reached the door, ten to fifteen officers forced the door open and entered the apartment.

§ 87(2)(b) was able to describe four of the officers. § 87(2)(b) described PO1 as a short white male, about 5'8" to 5'10" tall, with a medium build, in his mid 20's to early 30's, wearing a blue NYPD windbreaker and a fitted hat. § 87(2)(b) described PO2 as a possibly Hispanic male, about 5'8" to 5'10" tall, black facial hair and beard and mustache, about 240 pounds with wearing glasses. § 87(2)(b) described PO3 as 6'3" to 6'4" tall, slim, bald-headed, white male, with no facial hair. PO3 was wearing Khaki's, a blue sweater with grey stripes and a fitted hat. PO3 removed his hat at the precinct and that is when § 87(2)(b) noticed his bald head. § 87(2)(b) described PO4 as a white male, with long brown hair. PO4 was wearing a hat, but § 87(2)(b) did not recall what type of hat this was.

Two of the officers had their guns pointed at § 87(2)(b) and § 87(2)(b) as they entered the apartment. PO 1 pushed § 87(2)(b) down to the floor and punched him on his right cheek. § 87(2)(b) observed his mother, § 87(2)(b) by the couch. One of the officers, § 87(2)(b) could not recall which one as the officer had his back turned to § 87(2)(b) was punching her in the stomach. § 87(2)(b) asked the officers why they were hitting his mother and PO1 punched him on his right cheek, then on his left cheek by his ear. § 87(2)(b) asked PO1 why he was hitting him and PO1 told him to "Shut up and stop being a baby." PO1 hit § 87(2)(b) a third time on top of his right eyebrow.

PO1 escorted § 87(2)(b) to a prisoner van outside. On the way down, PO1 claimed that § 87(2)(b) had spit on him and PO1 used his thumb to apply pressure to the left side of § 87(2)(b)'s neck for approximately 20 to 30 seconds causing him pain. § 87(2)(b) was then escorted to the van, followed by § 87(2)(b) and § 87(2)(b) and they were transported to the precinct stationhouse.

### **Results of Investigation**

#### ***Civilians Not Interviewed***

§ 87(2)(b) stated that § 87(2)(b) was a victim in this incident. § 87(2)(b) also stated that § 87(2)(b) and § 87(2)(b) witnessed the incident. First please call letters were sent to § 87(2)(b) and § 87(2)(b) on December 12, 2008. On January 5, 2009 the undersigned investigator spoke to § 87(2)(b) who scheduled an interview for January 21, 2009. The undersigned investigator attempted to contact § 87(2)(b) five times between January 20, 2009 and March 3, 2009. On January 20, 2009, the undersigned investigator contacted § 87(2)(b) and she cancelled the appointment for § 87(2)(b). § 87(2)(b) contacted the undersigned investigator on February 3, 2009 and scheduled an interview for § 87(2)(b) for February 17, 2009. § 87(2)(b) missed this interview. A missed appointment letter was to § 87(2)(b) on February 17, 2009. A final please call letter was sent to § 87(2)(b) on February 17, 2009. A Lexis Nexis search, conducted on February 20, 2009, for § 87(2)(b) confirmed his address and did not yield a telephone number.

On January 20, 2009, the undersigned investigator contacted § 87(2)(b) via telephone who stated that she did not recall much of the incident.

The undersigned investigator contacted § 87(2)(b) via telephone five times between January 20, 2009 and March 30, 2009. On February 24, 2009, § 87(2)(b) scheduled an interview for February 26, 2009. § 87(2)(b) missed this interview. A missed appointment letter was sent to § 87(2)(b) on March 5, 2009.

On August 18, 2009, the undersigned investigator contacted § 87(2)(b) via telephone to schedule a photo array viewing for her and § 87(2)(b). A detailed message was left for § 87(2)(b). The undersigned investigator sent a letter to § 87(2)(b) and § 87(2)(b) on August 27, 2009 explaining the need for a photo array viewing to identify the subject officers in this investigation. The undersigned investigator contacted § 87(2)(b) via telephone and left a detailed message on September 4, 2009. On September 4, 2009, the undersigned investigator contacted § 87(2)(b) via telephone and § 87(2)(b) scheduled an appointment for September 9, 2009 for her and for § 87(2)(b) to view photo arrays. § 87(2)(b) and § 87(2)(b) missed this appointment. Missed appointment letters were sent to § 87(2)(b) and § 87(2)(b) on September 10, 2009. The undersigned investigator contacted § 87(2)(b) via telephone on September 14, 2009 and left a detailed message. On September 14, 2009, the undersigned investigator contacted § 87(2)(b) via telephone and § 87(2)(b) stated that he would return the investigator's call.

To date, none of the above mentioned civilians have contacted the undersigned investigator and the letters sent to them have not been returned to the CCRB.

#### **Identification of Officers Interviewed**

Sgt. Sbarra was identified as one of the search supervisors via the tactical plan and Detective Mercado was identified as the arresting officer via the arrest reports.

#### **Sgt. Daniel Sbarra**

Sgt. Daniel Sbarra is a § 87(2)(b). Sgt. Sbarra was interviewed at the CCRB on August 5, 2009. Sgt. Sbarra did not recall who he was working with specifically but stated that they were all part of the team assigned to the search. Sgt. Sbarra was wearing an NYPD raid jacket and his badge was displayed around his neck. Sgt. Sbarra did not have his memo book.

On December 5, 2008, Sgt. Sbarra worked from either 3:00PM to 11:00PM or 4:00PM to midnight. He supervised the search of § 87(2)(b) at § 87(2)(b) in Brooklyn. The narcotics team assigned to the search was in possession of a search warrant for Heroin and other narcotics. After entering the apartment, they apprehended § 87(2)(b) and § 87(2)(b) who were later processed at the 81<sup>st</sup> Precinct. They then searched the location. Sgt. Sbarra recalled that narcotics were found in the apartment but he did not recall what they specifically were.

After viewing the tactical plan, Sgt. Sbarra confirmed that Detective Edward Mercado was assigned to bunker one, meaning he would be the first officer to enter the apartment. However, he did not have an independent recollection of which officer entered the apartment first and stated that sometimes it is not the officer assigned to that position on the tactical plan. Sgt. Sbarra did not recall how many officers entered

the apartment before him and did not believe he rammed the door of the apartment open. When he entered the apartment, Sgt. Sbarra did not have his gun drawn and he did not recall other officers doing so. Sgt. Sbarra did not recall a female officer being present during the search and stated that the officers present on the scene would be those listed on the tactical plan and officers from PSA3 who would not enter the apartment. The PSA3 officers would only be present in case drugs are thrown out of a window or in case there is a need for a hospital vehicle. Sgt. Sbarra did not recall who the officers present from PSA3 were.

When Sgt. Sbarra entered the apartment, he went to the living room and apprehended § 87(2)(b). Sgt. Sbarra asked § 87(2)(b) to get on the ground and § 87(2)(b) refused. Sgt. Sbarra then wrestled § 87(2)(b) to the ground and handcuffed him. No one assisted Sgt. Sbarra in apprehending § 87(2)(b). Sgt. Sbarra did not recall what happened to § 87(2)(b) after he was handcuffed. Sgt. Sbarra was not the officer who escorted § 87(2)(b) out of the apartment as he had to remain in the apartment to supervise the search. § 87(2)(b) and her daughter were also in the living room. § 87(2)(b)'s daughter was later picked up by her grandmother. § 87(2)(b) was in the dining room and § 87(2)(b) was in the back of the apartment. The warrant specifically named § 87(2)(b).

Sgt. Sbarra did not have any physical contact with anyone other than § 87(2)(b). Sgt. Sbarra did not push any of the civilians or punch them and did not witness any other officers do so. Sgt. Sbarra did not hit § 87(2)(b) on his head with a shield and did not observe any other officers do so. Sgt. Sbarra did not recall an officer pushing his thumb into § 87(2)(b)'s neck. Sgt. Sbarra did not use any profanity when speaking to any civilians and he did not hear any other officers do so. The civilians did not complain of any injuries or request medical attention.

Sgt. Sbarra supervised the search of the apartment but did not participate in the search. Sgt. Sbarra explained that the search warranted permitted the narcotics team to search anywhere narcotics could be hidden. Sgt. Sbarra recalled that there were narcotics items found in the apartment but did not recall what those were. He did not recall any property in the apartment being damaged. Sgt. Sbarra did not recall neighbors being in the hallway, if anyone asked for the search warrant or whether they were shown the search warrant.

### **Detective Edward Mercado**

Detective Edward Mercado is a § 87(2)(b). Detective Mercado was interviewed at the CCRB on April 9, 2009.

On December 5, 2008, Detective Mercado worked from 11:27AM to 8:00PM. He was assigned as the arresting officer in a search warrant operation. Detective Mercado's responsibilities during this assignment included taking property into custody, vouchering property and processing the arrests of the individuals arrested at the location of the incident, which is § 87(2)(b) in Brooklyn. Detective Mercado was working with approximately eight officers from the narcotics team of the 81<sup>st</sup> Precinct. Detective Mercado believes that everyone on the team was a male. Detective Mercado was assigned to rental auto 8614. Detective Mercado described this vehicle as a black Altima. Detective Mercado read the following entries from his memo book regarding the incident. "14:30, tac-up at the 81 Precinct. 14:40, en route to search warrant execution. 14:45, search warrant at § 87(2)(b) 4 under. 17:30, 98." Detective Mercado indicated that the code 98 represented resuming patrol.

On December 5, 2008, at approximately 2:30 PM, Detective Mercado arrived at § 87(2)(b) in Brooklyn and did a preliminary search for individuals in the location. Upon entry into the apartment, Detective Mercado's position was bunker number one meaning that he was the first officer into the apartment and he was carrying a bunker shield. His task was to move as quickly through the apartment as possible in order to make sure all the individuals were secure. Upon entering the apartment, Detective Mercado observed § 87(2)(b) in the kitchen. Detective Mercado asked § 87(2)(b) for his hands for safety purposes which § 87(2)(b) presented. Other members of Detective Mercado's team handcuffed § 87(2)(b) and took him into custody. Detective Mercado did not recall which officer handcuffed § 87(2)(b).

Detective Mercado then went to the rear of the apartment. Upon passing the living room, from his peripheral vision, he observed § 87(2)(b) and § 87(2)(b) standing in the living room. Detective Mercado did not have any interaction with these individuals. Detective Mercado headed to the rear of the apartment, where he observed § 87(2)(b) standing by the door of a bedroom. Detective Mercado asked § 87(2)(b) for his hands and § 87(2)(b) presented them and was apprehended.

The civilians were escorted to the 81<sup>st</sup> Precinct for processing. Detective Mercado did not witness the handcuffing process of § 87(2)(b) and § 87(2)(b) and did not have any physical contact with any of the individuals inside of the apartment. He did not push or punch anyone. Detective Mercado did not observe any officers have physical contact with anyone inside the apartment.

Detective Mercado showed a copy of the search warrant to § 87(2)(b) after he was apprehended. Detective Mercado did not use any profanity when speaking to § 87(2)(b) or any other individuals in the apartment. Detective Mercado did not tell any individuals to, "Shut the fuck up." Detective Mercado did not hit any of the individuals on their head with a badge/shield and did not observe any other officers do so. Detective Mercado did not any press his thumb into § 87(2)(b)'s neck and he did not observe any other officers do that.

A child was found in the rear of the apartment and was released to a relative of § 87(2)(b). Detective Mercado and the officers who helped him conduct the search, searched all locations in which drugs or weapons could be concealed. Detective Mercado did not recall what was recovered from the apartment, but knows that narcotics were recovered and that the majority of them were recovered from the kitchen area. Detective Mercado did not recall specifically where in the kitchen area the narcotics were found. Detective Mercado stated that the search warrant in this case was a no-knock warrant for narcotics. Detective Mercado did not recall having to break anything in the apartment in order to facilitate his search. Detective Mercado did not observe any other officers break any items.

At the precinct, during processing, Detective Mercado did not observe any injuries on any of the individuals and did not hear them complain of any injuries or physical force that occurred during the incident.

§ 87(2)(b)  
[REDACTED]  
[REDACTED]

§ 87(2)(c), § 87(2)(b)  
[REDACTED]  
[REDACTED]

#### ***Police Documents***

##### **Tactical Plan (Encl. 6D)**

The tactical plan indicates that team assigned to search § 87(2)(b)'s home consisted of eight male officers and unidentified officers from PSA3.

##### **Search Warrant (Encl. 6A-C)**

Search warrant § 87(2)(b) was for § 87(2)(b) at § 87(2)(b) in Brooklyn. It did not require proper notice and it could be executed between 6:00AM and 9:00PM. The implementation of the warrant was required within ten days of its issuance on December 2, 2008.

##### **Civilian CCRB History**

This is the first complaint on file for § 87(2)(b) (Encl. 2).

##### **Officer CCRB History**

###### **Captain Michael Lipetri**

Captain Lipetri has no prior substantiated allegations (Encl. 1).

### Conclusions and Recommendations

#### **Subject Officer Identification**

There is insufficient evidence to identify the subject officers for allegations B and C. Therefore, these allegations are pleaded against “officers”.

#### **Undisputed Facts/Disputed Facts**

It is undisputed that § 87(2)(b)'s home was entered and searched under the supervision of Captain Lipetri.

It is disputed whether any officers used physical force against § 87(2)(b) or § 87(2)(b). It is also disputed whether any officers spoke discourteously to § 87(2)(b) and § 87(2)(b).

§ 87(2)(g)

#### **Allegations Not Pled**

§ 87(2)(b) alleged that officers had their guns pointed at him and § 87(2)(b) as they entered this apartment. Given that this incident involves a search and entry with a proper warrant, this allegation is not pleaded as it is subsumed within allegation A. § 87(2)(b) further alleged that her property was damaged as a result of the search of her home. Given that the search warrant in this case was for drugs and that it authorized the officers to search anywhere where drugs could be hidden, this allegation is also subsumed within allegation A. § 87(2)(b) alleged that the officer who used physical force against § 87(2)(b) also told him to, “Shut the fuck up”. Conversely, § 87(2)(b) stated that the officer said, “Shut up and stop being a baby”. Thus this allegation of discourtesy is not pleaded.

#### **Allegation A: Officers entered and searched § 87(2)(b) in Brooklyn.**

§ 87(2)(g)

**Allegation B: Officers used physical force against § 87(2)(b) and § 87(2)(b)**

**Allegation C: Officers spoke obscenely and/or rudely to § 87(2)(b)**  
§ 87(2)(b) and § 87(2)(b) were not cooperative with this investigation. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date:

